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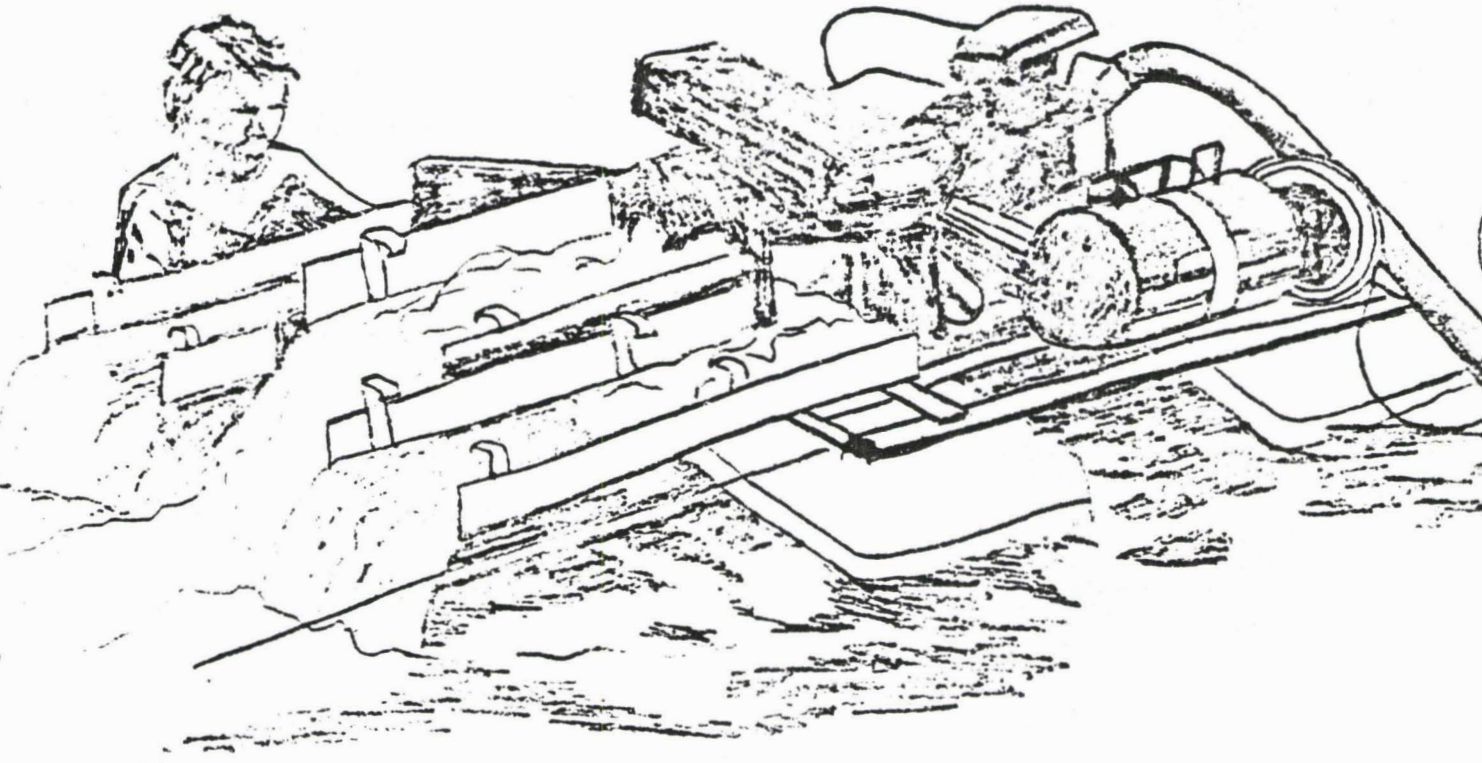
A STRATEGY FOR PROVIDING FOR THE RECREATIONAL ACTIVITIES OF GOLD DREDGING AND PANNING



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PLUMAS NATIONAL FOREST

UNITED STATES DEPARTMENT OF AGRICULTURE - FOREST SERVICE

82

A STRATEGY FOR PROVIDING THE RECREATIONAL ACTIVITIES OF GOLD DREDGING AND PANNING

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ABSTRACT

A STRATEGY FOR PROVIDING THE RECREATIONAL ACTIVITIES OF GOLD DREDGING AND PANNING.

Gold mining in general, and gold dredging specifically, have increased dramatically in recent years. Nearly all accessible areas have already been claimed, thus preventing the recreationist interested in gold panning and dredging from being able to pursue these recreation activities. Recreationists have left the National Forest frustrated because they could not practice a little of their heritage. Others have been dismayed to find "No Trespassing" signs along streams or even had ugly confrontations with mining claimants.

There are specific situations (Wild and Scenic Rivers, mineral entry withdrawals) that can provide some relief to the situation of claims being filed everywhere, but strategies and direction have not been uniformly developed and implemented.

This study found numerous references to mining, mining history and minerals but practically no data pertaining to the recreational activites of gold dredging and panning as differentiated from commercial mining.

Recommendations were proposed based on the hypotheses that if a few selected areas were withdrawn from mineral entry (filing of mining claims), more people would benefit by being able to enjoy the interesting, healthful, and exciting recreation activities of gold dredging and panning. The recommendations included criteria for identifying the potential withdrawals and named some specific sites.

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CHAPTER I

INTRODUCTION

Statement of the Problem

Gold mining in general, and gold dredging specifically, have increased dramatically in recent years with 951 placer claims being filed in 1982 in Plumas County, California (19). See Figure 1. Nearly all accessible areas have already been claimed, thus preventing the recreationist interested in gold panning and dredging from being able to pursue these recreation activities. Recreationists have left the National Forest frustrated because they could not practice a little of their heritage. Others have been dismayed to find "No Trespassing" signs along streams or even had ugly confrontations with mining claimants.

There are specific situations (Wild and Scenic Rivers, mineral entry withdrawals) that can provide some relief to the situation of claims being filed everywhere, but strategies and direction have not been uniformly developed and implemented. The intent of this study is to:

- Present a strategy and recommend specific direction to keep some streams open and available for the recreational activities of gold dredging and panning.

- Recommend a specific plan of action for the Plumas National Forest to enhance the recreational activities of gold dredging and panning.

Hypotheses

If an area along a stream were withdrawn from mineral entry (filing of a claim), more people would benefit by being able to legally enjoy the interesting, healthful, and exciting recreation activity of gold panning and dredging.

Delimitation

Delimitations to this study include:

- While the general principles apply to any National Forest lands established from the Public Domain which are impacted by placer gold mining, the specific discussion and direction pertain solely to the Plumas National Forest.

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- While the general principles apply to any National Forest lands established from the Public Domain which are impacted by placer gold mining, the specific discussion and direction pertain solely to the Plumas National Forest.

- While the term "recreational miner" or "recreational mining" is commonly used in the literature, it must be recognized that the term has no legal significance. Under the 1872 Mining Law, mining is "mining" and there is no differentiation between recreational and commercial mining.

- This study is confined to the recreationist seeking recreational activities along streams such as gold dredging and panning and how to find a niche for that person to pursue these recreation activities. The study in no way analyzes all of the ramifications of the 1872 Mining Law and other laws and regulations subsequently passed that affect miners and mining.

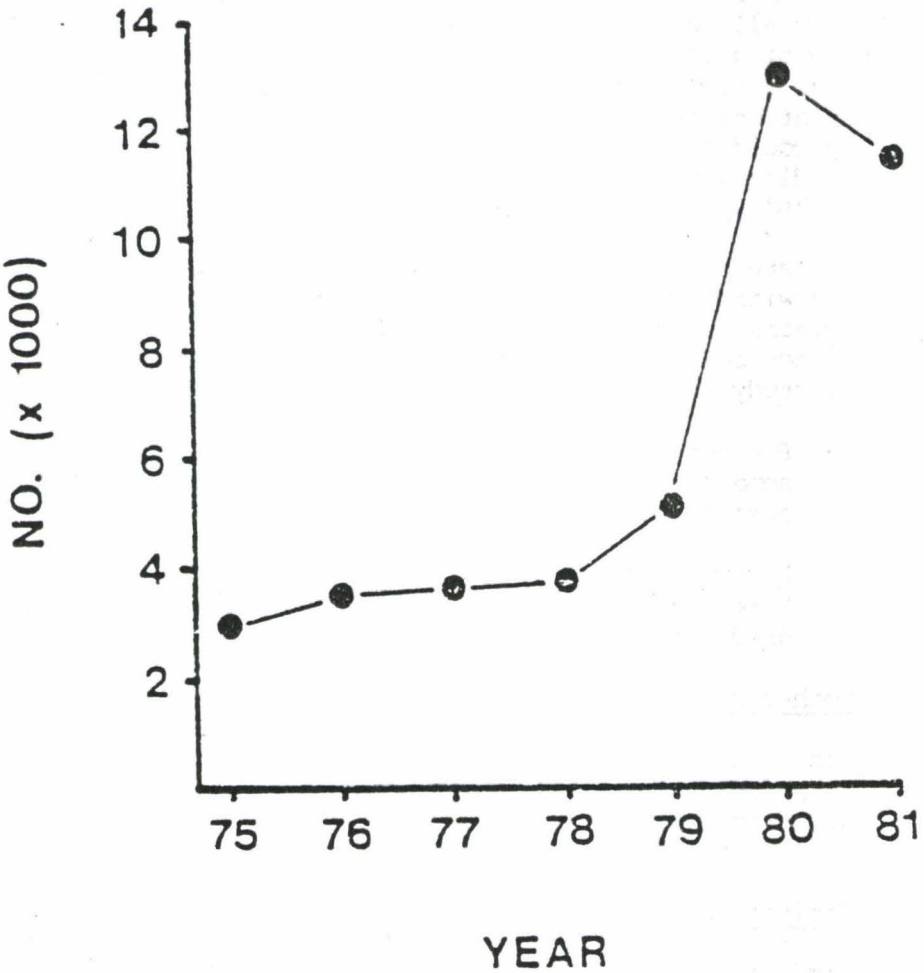

Figure 1. Total number of suction dredge permits issued by California Department of Fish and Game, 1975-1981 (10).

Definitions

The following words and terms are defined as used in this study:

- Placer Claim. A claim staked on all forms of deposit, excepting veins of quartz or other rock in place, and typically are deposits of valuable minerals found in particles of alluvium in beds of active streams or ancient rivers (28).

- Discovery. Required by the 1872 Mining Law, but not defined in it. It has been held in a long list of cases beginning in 1894 that a discovery exists where:

> "* * * minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a profitable mine . . . . " Castle v. Womble, 19 L. D. 455, 457 (1894).

- Mineral Entry. The making of a valid discovery followed by the filing of a claim on public land (28).

- "Color." Gold, usually fine grains, isolated in a gold pan.

Basic Assumptions

- Gold panning and dredging are recreation activities for an ever increasing number of people.

- All gold mining, is governed by the 1872 Mining Law and subsequent laws and regulations pertaining to miners and mining.

Limitations

Limitations of this study are:

- Little information has been gathered and published concerning the recreational activities of gold panning and dredging; thus the conclusions and recommendations are based on subjective feelings rather than quantitative data.

- While this study has received review by Ranger District and Forest Supervisor Office personnel, no public involvement has occurred.

Photo 1. "No Trespassing" sign on a mining claim. This kind of sign improperly closes many miles of stream to recreationists (17).

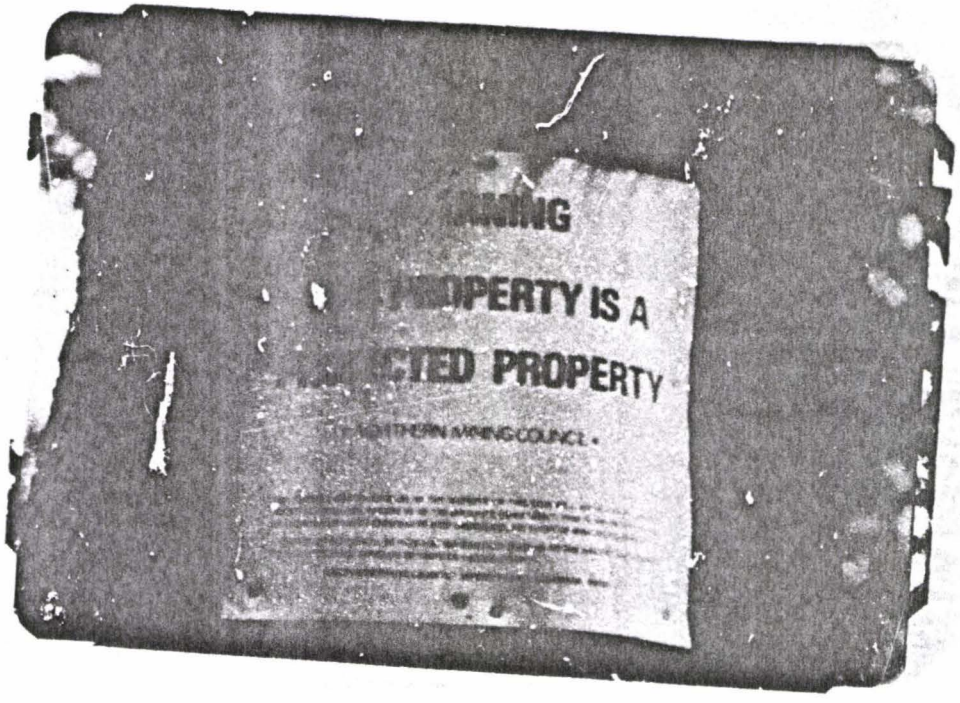

Photo 2. "Warning" sign on a mining claim (17).

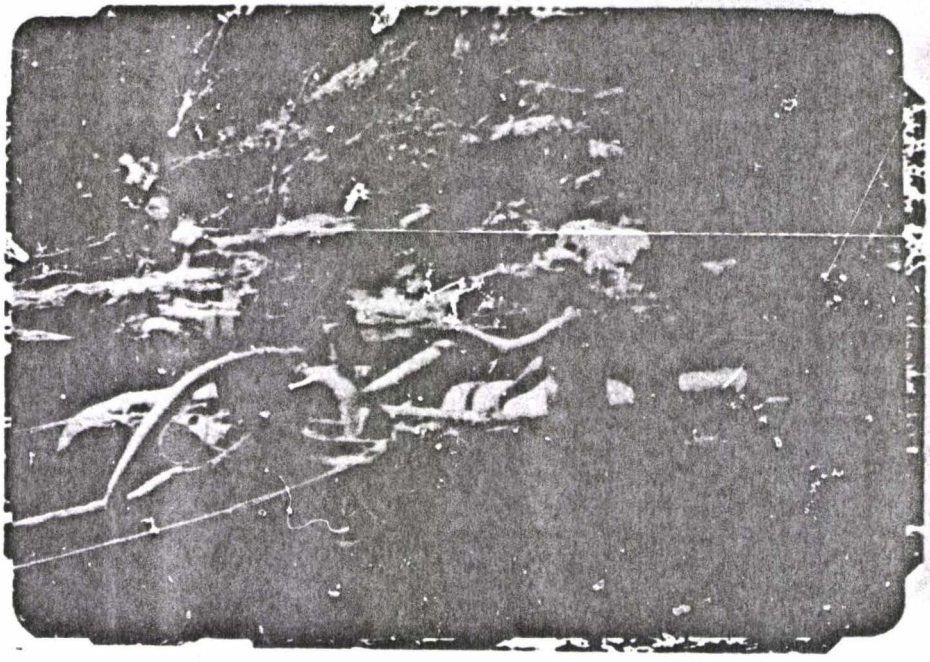

Photo 3. Gold dredging (17).

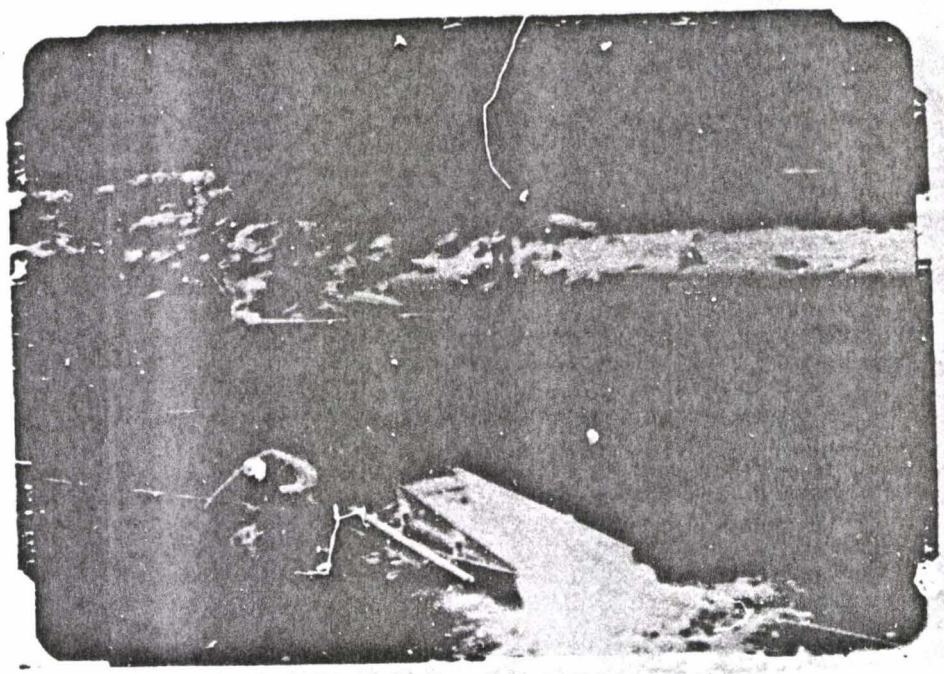

Photo 4. Gold dredging (17).

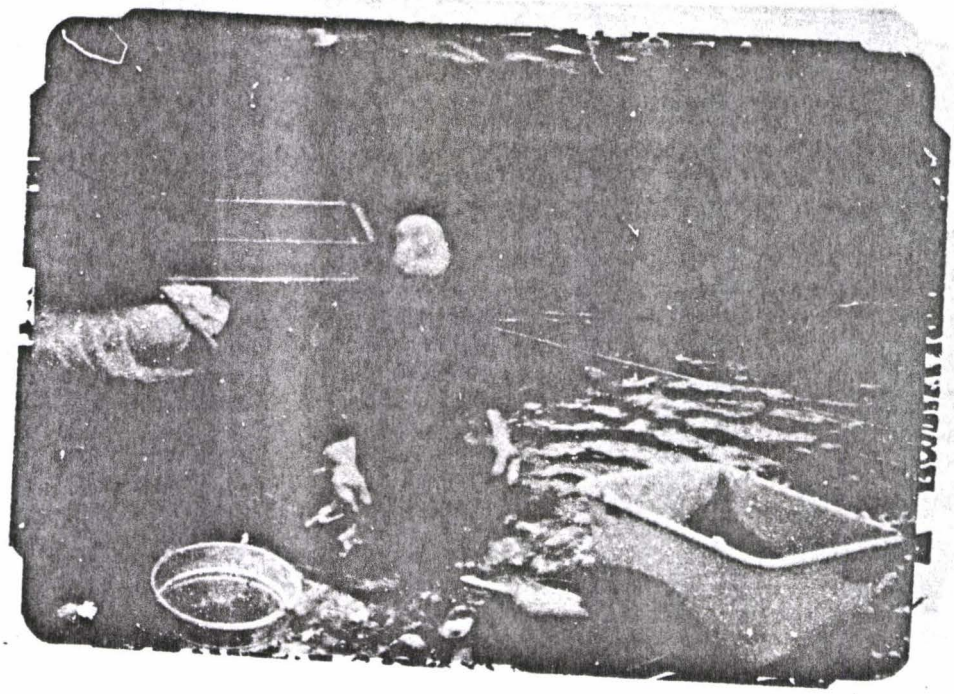

Photo 5. Panning (17).

CHAPTER II

REVIEW OF LITERATURE

A literature search was conducted to examine the feasibility of designating specific areas along streams where the recreational activities of gold panning and dredging could occur, but the filing of claims would be prohibited. A vast amount of information exists relating to mining methods, mining history, and minerals, but very little data exist concerning the recreational activities of gold panning and dredging or strategies which provide for these activities. This is illustrated by the fact that a literature search by WESTFORNET yielded not one document. The questions asked were:

- Information on the number of placer gold mining claims and miners, and their increase in recent years. Also, the motivation of the miners was requested.

- Information on the relationship between placer mining claims and power and mineral withdrawals.

- Information on the relationship between placer gold mining claims and Wild and Scenic Rivers.

Sources searched included the National Technical Information Service, Selected Water Resources Abstract, National Agricultural Library (AGRICOLA), GEOREF, and GEOARCHIVE.

This resulted in the literature search being conducted by:

- Scanning the monthly issues of the California Mining Journal from June 1980 to the present.

- Studying appropriate laws along with their legislative histories in the United States Code Congressional and Administrative News.

- Hearing mention of work being conducted by the California Department of Fish and Game and ultimately locating the authors of these studies.

- Scanning all appropriate books listed in the subject card files of the Plumas and El Dorado County Libraries and the California State Library in Sacramento.

- Responding to advertisements in the California Mining Journal, which resulted in an array of catalogs, brochures and sample magazines and newspapers related to mining being received.

- Studying the Forest Service Manual and training manuals on subjects related to gold mining.

- Reviewing the P.L. 84-359 Case Folders and the decisions of the Administrative Law judges for the 32 hearings so far conducted for the Plumas National Forest.

Federal Laws

The laws of the United States are paramount when considering recreational mining and possible strategies related to it. These include:

- Mining Law of 1872. Acquisition of mining claims on public land is a right granted by this law. It also established various procedures to be followed to file for and hold mining claims.

- Mineral Materials Act of 1947. This Act allows the Secretary of Agriculture to "...dispose of mineral materials (including but not limited to common varieties...) on public lands of the United States...under such rules and regulations as he may prescribe...if the disposal of such material...(1) is not otherwise expressly authorized by law, including...the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation...." The Secretary shall dispose of materials...to the highest responsible qualified bidder after formal advertising...." The Seecretary is allowed to negotiate under certain circumstances.

- Mining Claims Rights Restoration Act of 1955, PL 84-359 (36). This Act opened lands to mineral entry under the Federal Mining Laws previously withdrawn or reserved for power development or power sites. While making some 7 million acres open to mineral entry again, the Act gives the Secretary of the Interior authority to hold "...a public hearing to determine whether placer mining operations would substantially interfere with other uses of the lands included within the placer claim..." and requires that "...mining operations on that claim shall be further

suspended until the Secretary has held the hearing and has issued an appropriate order." If the Secretary of the Interior holds a public hearing, he may completely prohibit placer mining, give general permission to engage in placer mining, or grant permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations.

- Wild and Scenic Rivers Act of 1968, PL 90-542 (39). Section 8a of this Act withdraws from sale or other disposition all public lands within the authorized boundaries of any component of the National Wild and Scenic River System.

  Section 9a indicates that this Act does not affect the applicability of the United States mining laws except that all prospecting, mining operations and other activities on mining claims shall be subject to such regulations as the Secretary of Agriculture may prescribe, and that the minerals within one-quarter mile of the bank of any river in a Wild Zone are withdrawn from all forms of appropriations under the mining laws.

- Federal Land Policy and Management Act of 1976, PL 94-579 [FLPMA] (32). Section 204 of this Act is the sole authority now for the Government to authorize withdrawals. The Secretary of Interior may designate a withdrawal aggregating less than 5,000 acres under this section by his own motion for such period as he deems desireable for a resource use or for a period of not more than 20 years for any other use. He may also initiate withdrawals over 5,000 acres subject to Congressional oversight and having a 20 year limit.

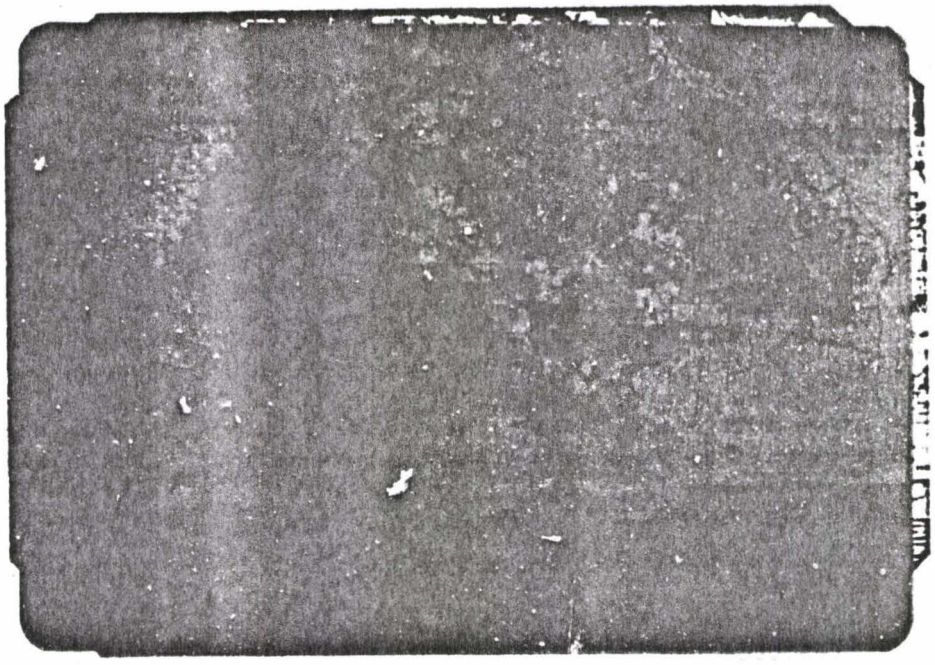

Photo 6. Map of Plumas National Forest depicting:

Red - Power Withdrawals

Blue - Wild Zones of Middle Fork of the Feather Wild and Scenic River

Orange - Scenic and Recreation Zones of the Middle Fork of the Feather Wild and Scenic River.

Photo 7. Map of a portion of Plumas National Forest - larger scale, same legend as foregoing.

- "359" Hearings. Decisions in several cases clarify the intent of PL 84-359. These include:

    1. The Governments response to Appellants Statement of Reasons in the USDI Board of Land Appeals case United States vs. Robert E. Ehrman Jr., dated October 15, 1982 (5) which states "the purpose of the hearing was only to determine whether placer mining operations might result in substantial interference with other uses of the land encompassed by the mining claim. See United States v. Western Minerals and Petroleum Inc. supra... The 1955 Act only allows for an order permitting or prohibiting unrestricted placer mining. The only condition which may be imposed on permission to mine is that the locator must restore the surface of the claim to

its condition immediately prior to mining operations. United States v. R. James Steward, supra; United States v. Paul F. Bennewitz, 72 I.D. 183 (1965)."

2. In a case dated January 7, 1981 (26) pertaining to Mining Claims 67557 and 67558, Judge R.M. Stiener stated "No restriction may be placed on the manner of such operations beyond the requirement of surface restoration. United States v. Connolly 40 IBLA 188 (1976)... Placer mining which would substantially interfere with recreational use may be prohibited. Boyd McGinn, 25 IBLA 188 (1976). Accordingly, it is concluded that:

   a) Placer mining operations would substantially interfere with other uses of the above described lands.

   b) Placer mining should be prohibited on the lands embraced by the...mining claims."

3. In a decision dated August 3, 1982, (6) pertaining to Mining Claims 24044 and 70018, Judge E. Kendall Clarke determined that in spite of a previous "359" decision pertaining to the same parcel of land which prohibited placer mining, he did "...not find any legal basis for determining that the decision runs with the land...." In other words, the "359" procedures of filing a claim, BLM's 60 day notice, Forest Service's request for a hearing, and BLM's conducting a hearing may be repeated for a new claim on the same parcel of land.

Forest Service Manual

The 2800 Section of the Forest Service Manual deals with minerals and geology (33). A brief discussion of the basic elements of the general mining laws and the specific requirements for a valid mining claim quoted from the Forest Service Manual is located in Appendix 1.

The section also points out that the minerals in the Wild Zone of a Wild and Scenic River are withdrawn from mineral entry. All prospecting and mining not perfected before inclusion of a river in the Wild and Scenic River System are subject to such regulations as the Secretary of Agriculture may prescribe. A brief discussion concerning the relationship of the mining laws and the Wild and Scenic River Act is in Forest Service Manual 2816.3 and is included in Appendix 2.

The section also discusses power site withdrawals and the associated Mining Claims Rights Restoration Act of 1955, commonly referred to as "359" cases. A brief resume of the Act quoted from the Forest Service Manual is in Appendix 3.

Forest Service Training Manuals

Anatomy of a Mine (30) gives a brief overview of mining with emphasis on the commercial mine. Several pages are devoted to the history of the 1872 Mining Law and principles of filing claims. These principles include:

- Acquisition of mining claims on Government land is a right granted by the U.S. Mining Law of 1872. Minerals on Government land are open to exploration by all citizens of the United States. A "discovery" is mandatory.

- Placer claims located by a single person and based on a single discovery are limited to 20 acres.

- A claimant must perform $100 worth of development work/claim/year and report this to the County Recorder and the Bureau of Land Management (BLM).

- Under the 1872 Mining Law, land is claimed for minerals after making a valid discovery by marking the boundaries and erecting corners (usually rock mounds or wooden posts). State law and FLPMA require placing a copy of the location notice on a monument located near the discovery hole. The location notice must be filed with the County Recorder and BLM.

- Anatomy of A Mine recognizes the recreational activities of gold panning and dredging by stating that "...a great deal of wisdom and fine judgement will be required in finding ways to regulate the recreationist-prospector..." and "...gold panning has become a popular outdoor recreation."

California Department of Fish and Game

The California Department of Fish and Game (DFG) was concerned about the effects of gold dredging on water quality and fisheries. They conducted a study in 1981 and 1982 leading to the publication in June 1982 of "Some Physical and Biological Effects of Suction Dredge Mining" (10). This report dealt primarily with water quality and fisheries, but did document that the number of suction dredge permits issued annually by DFG increased from approximately 3,000 in 1975 to over 13,000 in 1980.

A follow-up study to the initial study looked at the effects of dredging and of the miner on the physical and biological environment of the stream and adjacent riparian zone. In "Survey of Suction Dredge Mining Effort and Effects in Selected Mother Lode Streams" dated September 1982 (12), the DFG reports on their observations of 200 dredging operations, 36 of which were on the Plumas National Forest. Based on local knowledge of likely gold dredging locations, 94 locations were visited on 54 streams which resulted in finding 34 locations having activity. The 200 operations involved in the interviews represented 317 miners involved with 270 dredges.

Some 49 percent of the miners interviewed identified themselves as "recreational" versus 51 percent as "professional." Interestingly, 74 percent of the "recreational" miners utilize a dredge size of 4 inches or under and consumed 20 percent of the total hours of mining effort, while 80 percent of the "professional" miners utilized a dredge size of 4 inches or larger and consumed 80 percent of the total hours of mining effort. It was determined that a total of 1,400 person years were spent dredging in California in 1981, which averages 235 hours of dredging effort per miner per year.

A preliminary draft of "Suction Dredge Gold Mining" (18) is based on the same data as the preceding study. Additional data brought out includes 68 percent of the dredges ranged between 3 to 5 five inches, while the smallest was 1½ inches and the largest was 10 inches. About 17 percent of the "recreational" miners lacked a dredging permit, but only 7 percent of the "professional" miners lacked a permit. Approximately 80 percent of the "recreational" miners spend less than 199 hours per season dredging, while approximately 70 percent of the "professional" miners spend more than 400 hours per season dredging.

Personal conversation with Kim McCleneghan (17), one of the principal authors of these studies, revealed:

- A need was expressed by some of those interviewed to have an "open" area.

- Some claim owners make money by leasing their claims to recreationists for as much as $200/week.

- When dredging is associated with non-dredging recreationists in the proximity of a developed campground, the non-dredgers complain about the noise.

- There is a need to support concentrations of dredgers with toilet facilities as there are usually no developed facilities nearby.

- There is practically no literature on this subject.

Other Publications and Catalogs

The outstanding book on gold dredging is Thornton's "Dredging for Gold" (27). This book defines the "recreational miner" as "...the flatlander who dominates the dredging scene...works 5 days a week...looking forward to weekends when he can journey... and play '49er' for a while...who likes to get away from the crushing, depressing atmosphere of the big city and out into the fresh air and sunshine...does not place great importance on 'striking it rich'... likes to do things somewhat out of the ordinary...a man who pursues a challenging hobby..." It recognizes that "recreational mining" is a "multi-million dollar a year business."

This book goes into detail in pointing out the proper way to file a claim and that much of the area is already claimed - one of the few books to clearly define this as a problem for the recreationist. It also states, "...It should be pointed out that prospecting and dredging are not necessarily associated with the filing of mining claims, and areas which are closed to claiming are often open to dredging in the form of recreation. (In fact, just about every Forest Ranger I've ever talked to regard dredging as a form of recreation, including those operations which extend over a full season)."

Three other publications discuss the recreational activities of gold panning and dredging and point out in an adequate fashion that much of the area is already claimed (22) (28) (4); however, these publications are not readily available to the neophyte recreationist interested in gold panning and dredging.

It is far more common for books being aimed at the recreationist interested in gold panning and dredging to discuss in glowing detail how to locate likely gold producing areas followed by descriptions of how to pan or dredge; and then towards the end of the book or article to tell how to stake a claim, never pointing out that a person should not do any mining until knowing the status of the land (2) (3) (8) (11) (13) (20) (23) (24).

Besides Thornton's (27) reference to mining in areas withdrawn from entry for claim filing, references are made to the concept in other articles. Magnam (14) refers to a BLM area closed to mineral entry, but where mining is allowed, stating, "This sort of claiming is great because there's always plenty of gravel to dig and there's no gunslinger shouting, 'Get off my land!' We don't have to fool around with all that legal hogwash of claim recording, fees, etc. The small miner hates getting locked out of mining districts because some claimholder claimed out the area, thereby eliminating any development by the public. The small miner has enough right to work gold districts as the claimholder does..."

A similar area was proposed as recreational by BLM in August 1982 (16). This action would remove 304 acres from mineral entry while the recreational activities of gold dredging and panning would be permitted.

A similar proposal was suggested on the Wenatchee National Forest (35) along a 6 mile stretch of river because of the large number of recreationists actively using the area; however, local opposition kept the proposal from being implemented. This was an attempt to be able to respond to the "many calls" received each year wanting to know where a person can pan gold.

The Bureau of Reclamation proposed prohibiting all mining along the Middle and North Forks of the American River which are within the Auburn Dam Project Area - some 42,000 acres, most of which is acquired land (21). The purpose of the closure is to protect the Federal Government's mineral rights as well as gain control of some unsatisfactory sanitation conditions. The President of the Mother Lode Chapter of The Western Mining Council stated they "...were going to fight it all the way" and "...contended miners are not battling for the right to have claims on the river but to keep recreational dredging alive." In effect, the miners are wanting the area to be kept as an "open" area for gold dredging.

A somewhat similar concept is that of sharing claims with numerous other people (31). The Gold Prospectors Association of America is proposing to maintain an atlas depicting their member's claims in conjunction with a permission form stating, "I give permission to my fellow members in GPAA to use my claims... I would allow dredging, panning, sluicing (all of the normal activities). No commercial mining and no camping are permitted..."

Every reference listed refers to the "recreational miner" although none except DFG's distinguish the characteristics differentiating the "recreational miner" from the commercial or professional miner. Nevertheless, it is clear that the recreationist interested in gold panning and dredging does exist and that steps are being taken to meet the needs of that person. Examples include the offering of a Recreational Gold Mining Class at California State University in Sacramento (15); the formal instruction in gold dredging and panning to Boy Scout troops in some localities (38); and, the creation of the Gold Prospector's Association of America (34) which was established to promote prospecting and prospecting skills, and to conduct annual contests in dredging, sluicing, and panning, including the World Gold Panning Championships at Knott's Berry Farm. Also, there are a number of resorts or camps in gold mining areas where a person can go to learn how to pan and dredge (25).

CHAPTER III

PROCEDURES

Little information was available pertaining to the recreational activities of gold panning and dredging; thus the conclusions of this report are more subjective that quanitative. No analytical procedures were used in developing this study.

CHAPTER IV

DISCUSSION

A key consideration in analyzing the data in the literature was the effect of the applicable laws. The following laws have a significant impact:

- Mining Claims Rights Restoration Act of 1955. This act allows the Forest Service through BLM to protest the establishment of a claim in an area withdrawn for power purposes. A hearing officer determines the outcome of a case, but has usually followed the recommendations of Plumas National Forest officials in cases pertaining to this Forest. The recommendation normally is a complete prohibition of placer mining because of potential resource damage on shore; this recommendation is made even when the miner is only intending to dredge in the stream. The basis of this is that the Hearing Officer can only deny the claim or require the operators of placer mining operations to restore such lands to their former condition when mining operations have been completed. Since restoration is frequently impossible if the claim should develop into a major project, the claim is denied.

  While this Act allows for a protest when the claimant files a claim under "359" procedures, it turns out that the Act does not require a claimant to file in this manner. Thus, many claimants continue to operate within a withdrawal without ever opening the hearing process by merely filing in the normal way.

- Mineral Materials Act of 1947. This Act eliminates the opportunity to dispose of gold except by selling it under this Act or by letting a claimant have it under the 1872 Mining Law. Wherever the 1872 Mining Act does not apply such as in a mineral entry withdrawal, the Mineral Materials Act does apply.

  As a practical matter, many people do dredge and pan for gold in withdrawn areas. These people are not in compliance with the Mineral Materials Act and the Forest Service has not endeavored to enforce compliance. This is primarily because their activities are viewed as recreation activities rather than mining activities.

- Wild and Scenic Rivers Act of 1968. Section 9a very clearly withdraws from all forms of appropriations the Wild Zones of designated rivers. Along with regulations prohibiting most motorized equipment in the Wild Zones, this effectively precludes filing of claims and any gold dredging. As policy, the Plumas National Forest permits only gold panning in the Wild Zones.

  Section 9a also clearly states that the Act does not affect the applicability of the United States Mining Laws except that all prospecting, mining operations and other activities on mining claims shall be subject to such regulations as the Secretary of Agriculture may prescribe. While not initiating any formal regulations, the Plumas National Forest has notified each claimant who has filed since 1968 that the area is not open to mineral entry because of being included within existing power withdrawals, but that gold panning and dredging may continue as recreation activities.

- Federal Land Policy and Management Act of 1976. Section 204 of this Act clearly gives the Secretary of Interior authority to make withdrawals initiated by the Forest Service. If a withdrawal along a stream were initiated and approved, new claims would not be allowed but existing claims would be allowed to continue until they were abandoned or contested. This section also provides for a study of all existing withdrawals by 1991 to determine if they are still needed; if not needed, they will be rescinded. The precise legal wording needed for a withdrawal to accommodate the recreational activities of gold panning and dredging is not clear; however FLPMA appears to provide for it. Nevertheless, there is some doubt considering political realities as to whether withdrawals actually will be approved.

  An opinion by the Office of General Counsel (OGC) dated May 17, 1983 (7) states "We construe this advice as meaning there is no authority, except perhaps the Mineral Materials Act, 30 USC 601 et.seq., to dispose of minerals - e.g., recreational mining - on lands withdrawn from the operation of the 1872 mining law." This opinion reinforces a March 15, 1967 opinion of the Associate Solicitor, Division of Public Lands, Department of the Interior which states:

  > "You have also asked whether certain areas containing known valuable deposits of locatable minerals may be withdrawn from disposition under the mining law and made available to recreation miners. As we have pointed out, the statutes are very explicit as to how persons are to obtain title to valuable deposits of locatable minerals on the public domain. Consequently, we do not see how these areas may be made available to rockhounds outside the scope of the mining laws."

> The OGC opinion continues by referring to OGC Opinion No. 5081 dated December 7, 1944 "...concerning the authority to dispose of minerals other than pursuant to the 1872 mining law..." and "...concludes that absent express statutory authority, there is no implicit authority under the Organic Act of 1897...to dispose of minerals from National Forest lands."
>
> Paraphrasing these opinions, when a withdrawal closes an area to mineral entry, this closes the area to all mining - no exceptions. Furthermore, there is no authority to dispose of minerals outside of the 1872 Mining Law and the Mineral Materials Act. This suggests that it is necessary to differentiate between gold mining and the recreational activities involving gold panning and dredging.
>
> Even though some of these referenced opinions go back many years, the common practice has been to allow gold dredging and panning in withdrawn areas as long as claims were not filed. It is only quite recently that it has been recognized that gold mining should not be allowed in a withdrawn area, even if a claim is not filed.

All forms of gold mining clearly come under the 1872 Mining Act and subsequent related laws and regulations. However, the recreational activities of gold panning and dredging can be considered within the realm of 36 CFR 251.50 (c) where "The noncommercial temporary use or occupancy of National Forest System land or facilities by individuals for camping, picnicking, hiking, fishing, hunting, riding, boating, parking of vehicles and similar purposes is allowed without a special use authorization..."

To be consistent with the Mineral Materials Act and the 1872 Mining Law, the emphasis here must be on the recreation activities of gold dredging and panning with the assumption that any gold obtained is incidental and of minor amounts.

Another consideration was determining the impact of the present power withdrawals as they related to streams likely to have gold along them. Figure 2 depicts the acres (9) and miles of streams (29) within power withdrawals subject to PL 84-359 compared to the total for the Plumas National Forest. This reveals that over 25 percent of the acreage and nearly 40 percent of the streams are within power withdrawals. Most of the power withdrawals are on streams in proximity to gold bearing areas.

Figure 2.

	Power Withdrawals Subject to PL 84-359	Total - Plumas National Forest
Acres National Forest land	306,927	1,153,657
Miles of fishable streams	290	771

While nearly every reference listed in this study referred to "recreational miners" and "recreational mining", little factual data were presented concerning the subject. Statistics historically did not separate commercial mining from "recreational" mining. No reference was made to the recreational activities of gold panning and dredging in the activities listed in the Forest Service (37) Recreation Information Management System (RIM) nor in the California Department of Parks and Recreation's (DPR) "Recreation Activity in California and Ten Regions of the State 1980-2000, Volume I" (1). The closest RIM came to identifying the recreational activities of gold panning and dredging was the category "Gathering Forest Products" which was where the Plumas National Forest reflected this use (along with woodcutting and Christmas tree cutting which had far more adherents). The closest DPR came to identifying this activity was "Social Activity - Crafts and Hobbies."

No factual data were presented for creating "open" areas; nevertheless, comments were made in several references concerning the desirability of closing areas to mineral entry but continuing to allow the recreational activities of gold panning and dredging.

If "open" areas were created, it seems desirable to insure that only recreationists dredge or pan at the "open" area. The Plumas National Forest presently has a 21 day limitation at any specific location which seems sufficient to provide for the recreationist. Since DFG's (12) study indicates that the majority of recreationists utilize a gold dredge four inches or less in size, it seems that it would be appropriate to establish a Forest Order limiting the size of gold dredgers in "open" areas to four inches.

The Wild and Scenic Rivers Act states "Nothing in this Act shall affect the applicability of the United States mining laws... except that all prospecting, mining operations...in a Designated River... shall be subject to such regulations as the Secretary of

Agriculture may prescribe to effectuate the purposes of the Act..." The Forest Service Manual goes on to state "The regulations referred to above shall, among other things, provide safeguards against pollution of the river and unnecessary impairment of the scenery within the designated area." While no regulations have been proposed, it has been assumed that the mining laws cannot be restricted by such regulations. An alternative assumption is that Congress intended the mining laws to be modified in some fashion when it passed the Wild and Scenic Rivers Act providing that mining activities "...shall be subject to such regulations as the Secretary of Agriculture may prescribe..."

CHAPTER V

SUMMARY AND CONCLUSIONS

Summary of Procedures and Findings

A review of possible strategies was made on the Plumas National Forest to determine the potential for initiating measures to help keep areas open to the recreationist interested in gold dredging and panning. It was found that various provisiors in the Mining Claims Rights Restoration Act of 1955, the Wild and Scenic River Act of 1968, and the Federal Land Policy and Management Act of 1976 could help provide for the recreationist.

Conclusions

Based upon the findings and within the limitations of this study, conclusions are:

- The recreational activities of gold panning and dredging can be provided for in the Scenic and Recreation Zones of Wild and Scenic Rivers.

- The Mining Claims Rights Restoration Act of 1955 can incidentally help the recreationist, but should not be used as the primary tool.

- Section 204 of the Federal Land Policy and Management Act of 1976 provides for withdrawals from mineral entry. This is the primary tool to be used in providing a niche for the recreationist interested in gold panning and dredging.

- It is desireable to establish "open" areas for the recreationist which are closed to mineral entry.

Discussion and Implications

A conclusion of this study is that "open" areas should be created by means of withdrawals in selected areas in order to create more opportunities for the recreationist interested in gold panning and dredging. None of the references suggested where these withdrawals should be or how to determine when an area is appropriate for withdrawal. Following are suggested criteria for determining possible withdrawals along with a brief justification:

- It should be located on a yearlong stream having a flow of at least 5 c.f.s. The recreational activity of gold dredging is stream oriented and it is difficult to operate a dredge in less than 5 c.f.s.

- There should be little or no private land near the withdrawal. Trespass on private property is an ever present problem which can be reduced by having designated attractions well separated from private property.

- There should be a potential for finding some "color". It would be an excercise in futility to designate a withdrawal in an area for which there was no demand.

- There should be good vehicle access to the area. The area should be reachable in the family car without having to drive a long way from major highways.

- The terrain should not be hazardous. Many of the users of the area will be family groups and/or persons not especially experienced in the mountains.

- There should be some prospect of recovering most of the withdrawn area from existing claims within a few years. The purpose of the withdrawal would be to eliminate the present conflicts with existing claims.

While considering specific alternatives which might provide for the recreationist, it must be kept in mind that the vast majority of the acreage and streams will continue to be open to mineral entry. A few well located "open" areas will provide for the persons wanting to find a little "color" without all of the intricacies of locating a claim or for the persons wanting to try out their equipment or skill prior to going out to stake a claim.

Alternatives, along with a brief discussion, that might provide for the recreationist interested in gold panning and dredging include:

- Initiate action to withdraw from mineral entry all streamside lands on the Plumas National Forest. This would have serious social, economic, and political consequences which would make the existing plight of the recreationist seem inconsequential.

- Initiate action to withdraw selected parcels based on the preceding criteria. This seems to have merit as it would meet the initial needs of an ever increasing number of recreationists but not have a major impact on commercial mining.

- Continue to protest the filing of claims in power withdrawals through the "359" process. This procedure is a "must" if the Scenic and Recreation Zones of the Middle Fork of the Feather Wild and Scenic River and other areas which may be declared "open" are to remain open for the recreationist. Protests should be predicated on resource values. Nevertheless, all protests are a stop-gap measure because of the termination of all withdrawals in 1991 unless reviewed and reestablished.

Specific sites that meet the criteria and should be withdrawn from mineral entry include:

- Milsap Bar Scenic Zone. This three mile Scenic Zone on the Middle Fork of the Feather Wild and Scenic River is accessed by a good gravel road. While it does not meet the ease of access criteria very well, it is popular with recreationists interested in gold dredging and panning and relatively close to communities in the Sacramento Valley.

- English Bar Scenic Zone. This six mile Scenic Zone on the Middle Fork of the Feather Wild and Scenic River has easy paved road access as well as access by several dirt roads. It currently is the favorite spot on the entire Plumas National Forest for recreationists interested in gold panning and dredging.

- Middle Fork Recreation Zone. This sixty mile Recreation Zone on the Middle Fork of the Feather Wild and Scenic River has both paved and dirt road access. Only the lower portion below Jamison Creek is likely to produce any "color".

- Caribou. This six mile segment of the North Fork of the Feather River is paralleled by a paved road with easy access to the river. Several parcels of private land are present.

- Spanish Creek. This two mile segment of Spanish Creek near the Gopher Hill Bridge has easy access from a paved road. It is close to Quincy, California.

- New Golden Trout Crossing. This segment on the South Fork of the Feather River would extend ¼ mile above and below the bridge. Access is by a good dirt road.

- South Fork of the Feather River. This segment of nearly a mile in length extends from the inlet of Little Grass Valley Reservoir upstream to ¼ mile above the bridge. The area is served by a gravel road and is located close to major campgrounds.

- Onion Valley Creek. This segment would extend downstream ½ mile from the crossing of the Quincy-La Porte Road.

- Slate Creek. This segment is over 1 mile in length. Access is difficult requiring 4-wheel drive, and the terrain is hazardous. While not meeting the criteria very well, it is popular and an area of this type is needed in the general vicinity.

- Race Track Point. Access is somewhat remote and via a dirt road to this ½ mile segment, which extends upstream along Slate Creek from its junction with the North Fork of the Yuba River. While not meeting the criteria very well, it is popular and an area of this type is needed in the general vicinity.

- Upper Crossing. This segment extends ½ mile along Slate Creek upstream from the Yankee Hill Bridge. Access is via a winding dirt road and the terrain is hazardous. While not meeting the criteria very well, it is popular and an area of this type is needed in the general vicinity.

- West Branch Nelson Creek. This segment extends upstream and downstream ½ mile each way from the Johnsville - Gibsonville Road Bridge. A good dirt road serves the area which is approximately 20 miles from a paved road.

- Lower Nelson Creek Crossing. This segment extends downstream ½ mile from the bridge. A good dirt road serves the area which is approximately 5 miles from a paved road. The area is rather hazardous.

Recommendations

Recommendations include:

- Initiate action to withdraw from mineral entry the land along the streams previously mentioned. A key part of this action is to clearly differentiate between mining and the recreational activities of gold panning and dredging. This includes providing for these recreational activities with appropriate signing, brochures, and regulations. See Appendix 4 for legal descriptions of the proposed withdrawals. This action would meet the needs of the neophyte recreationist interested in gold panning and dredging and the need of the Forest Service to have a location to refer a person when asked; nevertheless, it is predictable that a segment of the mining community will see the action as a hindrance to mining. Because of this potential opposition, it is important to circulate the proposal and receive public comment on it.

Coincidently, the Plumas National Forest is just getting started in developing alternatives and prescriptions for specific parcels of land in the Land Management Planning process (LMP). The withdrawal of land from mineral entry is a land allocation which is one of the functions of LMP; thus the timing and inclusion of the proposal is quite appropriate. This process will receive wide public review and comment.

- Continue protesting claims within power withdrawals utilizing the "359" process when within "open" areas.

- Monitor existing withdrawals and acquired land to insure that recreationists have not established "claims" from which they try to exclude other recreationists.

- Prepare regulations for the Secretary of Agriculture which provide for the protection of the soil and vegetation along the shoreline, and which may discourage mining within the Recreation and Scenic Zones of the designated Wild and Scenic River. See Appendix 5 for wording of the proposed regulation. Different amended regulations would be needed if mineral withdrawals are enacted for the length of the designated Wild and Scenic River.

- As "open" areas are designated, activate a Forest Order which limits the size of the dredge to not over four inches.

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APPENDIX 1

TITLE 2800 - MINERALS AND GEOLOGY

2811 - BASIC ELEMENTS OF GENERAL MINING LAWS

2811.1 - Lands Open to Mineral Entry. All National Forest System lands which (1) were formerly public domain lands subject to location and entry under the U.S. mining laws, (2) have not been appropriated, withdrawn, or segregated from location and entry, and (3) have been or may be shown to be mineral lands, are open to prospecting for locatable, or hardrock, minerals (16 U.S.C. 482).

In prospecting, locating, and developing the mineral resources, all persons must comply with the rules and regulations covering the National Forests (16 U.S.C. 478).

2811.2 - Locatable Minerals. In general, the locatable minerals are those hardrock minerals which are mined and processed for the recovery of metals. They also may include certain nonmetallic minerals and uncommon varieties of mineral materials, such as valuable and distinctive deposits of limestone or silica.

Locatable minerals may include any solid, natural inorganic substance occurring in the crust of the earth, except for the common varieties of mineral materials and leasable minerals. Mineral materials include sand, stone, gravel, pumicite, cinders, pumice (except that occurring in pieces over 2 inches on a side), clay, and petrified wood. Leasable minerals are coal, oil, gas, phosphate, sodium, potassium, oil shale, sulphur (in Louisiana and New Mexico), and geothermal steam.

2811.3 - Types of Mining Claims

2811.31 - Lode Claims. Lode claims may be located only for veins or lodes or other rock in place, bearing metallic or certain other valuable deposits. Lode claims may not exceed 1,500 feet in length along the vein or lode and may not be more than 300 feet on each side of the middle of the vein at the surface. No mining regulation shall limit a claim to less than 25 feet on each side of the middle of the vein at the surface. The endlines of each claim shall be parallel (30 U.S.C. 23).

2811.32 - Placer Claims. Placer claims may be located only for valuable minerals that occur in other than vein or lode form, such as the gold contained in gravels and deposits or uncommon varieties of mineral materials. No placer claim shall include more than 20 acres for each individual claimant or up to a maximum of 160 acres for an association of eight locators. Placer claims shall conform to legal subdivisions when located on surveyed lands, unless the claim cannot be conformed to legal subdivisions, in which case a survey or plat is required, as in a gulch of shoestring placer (Snow Flake Fraction, 37 L.D. 250), with a metes-and-bounds description (30 U.S.C. 35, 36).

2811.33 - Millsite Claims. A millsite claim may not exceed 5 acres and must be described by metes-and-bounds or by legal subdivisions. When nonmineral land not contiguous to a vein or lode is used or occupied by the proprietor of the vein or lode for mining or milling purposes, the nonadjacent surface ground may be included in an application for patent for such vein or lode (30 U.S.C. 42(a)).

Where nonmineral land is needed and used, or occupied by a proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, the nonmineral land may be included in an application for patent for the placer claim (30 U.S.C. 42(b)). The number of millsites that may be legally located is based specifically on the need for mining or milling purposes, irrespective of the types or numbers of mining claims involved (30 U.S.C. 42).

2811.34 - Tunnel Site Claims. A person who excavates a tunnel acquires for a distance of 3,000 feet from the face of the tunnel in a straight line and limited to the width of the tunnel, the right of possession of all veins or lodes not previously known to exist and discovered in the tunnel. After discovery, the owner may locate a lode claim on the surface extending 1,500 feet along the lode (Enterprise

Mining Co., v. Rico-Aspen Consol. Mining Co., 167 U.S. 108). No rights are initiated to a vein until a lode location is properly marked on the ground. Failure to prosecute the work on the tunnel for 6 months is an abandonment of the right to all undiscovered veins on the line of such tunnel (30 U.S.C. 27).

2811.4 - Qualifications of Locators

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators. (30 U.S.C. 22; 43 CFR 3832.1.)

2811.5 - Requirements for Valid Mining Claim. The general mining laws impose certain obligations on a claimant who wishes to take advantage of the privileges those laws provide. A claimant must:

1. Discover a valuable deposit (FSM 2815.1, item 1) of a locatable mineral in federally owned public domain land open to the operation of the mining laws. Satisfaction of other requirements of the 1872 act does not make a claim valid absent a discovery of a valuable deposit.

2. Locate a claim on the valuable deposit.

3. Identify and monument the claim in the manner required by State law.

4. File in the appropriate office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The copy must be filed within 90 days after the date of location of the claim(s).

5. Perform annual assessment work or annual labor worth at least $100 on, or for the benefit of, the claim.

6. File a copy of an affidavit of assessment work or notice of intent to hold in the county office where the location notice or certificate is recorded.

7. File in the appropriate office of the Bureau of Land Management a copy of the affidavit of assessment work or notice of intent to hold. The copy must be filed by December 30 of each year following the calendar year in which the claim was located.

With the fulfillment of these requirements, a claimant obtains a valid mining claim. So long as such conditions continue to exist, the claimant is entitled to possession of the claim for mining purposes. It is optional with the claimant whether to apply for patent. Patent procedures and requirements, are described in FSM 2815.

The term "valid claim" often is used in a loose and incorrect sense to indicate only that the ritualistic requirements of posting of notice, monumentation, discovery work, recording, annual assessment work, payment of taxes, etc., have been met. This overlooks the basic requirement that the claimant must discover a valuable mineral deposit. Generally, a valid claim is a claim that may be patented.

Although the statues require the discovery of a valuable mineral deposit prior to the location of a claim, the courts and the Department of Interior have recognized a right of possession, in the absence of the discovery required by statute, if the claimant is diligently prospecting. The Forest Service recognizes this principle, and in keeping with the policy of encouraging bona fide prospecting and mining, will not discourage or unduly hamper these activities. Rather, the Forest Service should aid the legitimate activities of a prospector making bona fide efforts to

obtain a discovery on a good prospect. On the other hand, the Forest Service should oppose attempts by prospectors to build permanent structures, cut timber, build or maintain roads, unless authorized by special use permit or approved operating plan.

A mining claim may lack the elements of validity and be invalid in fact, but it must be recognized as a claim until it has been finally declared invalid by the Department of the Interior or Federal courts.

A claim unsupported by a discovery of a valuable mineral deposit is invalid from the time of location, and the only rights the claimant has are those belonging to anyone to enter and prospect on National Forest lands.

TITLE 2800 - MINERALS AND GEOLOGY

2816.3 - Wild and Scenic Rivers. All prospecting, mining operations, and all other activities on mining claims which are not perfected before inclusion of a river in the Wild and Scenic River System are subject to such regulations as the Secretary of Agriculture may prescribe to effectuate the purposes of the Wild and Scenic Rivers Act (16 U.S.C. 1280).

Subject to valid existing rights, the perfection of, or issuance of patent to, any mining claim affecting lands within the System shall confer or convey a right or title only to the mineral deposits and such rights to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of Agriculture.

The regulations referred to above shall, among other things, provide safeguards against pollution of the river and unnecessary impairment of the scenery within the designated area.

Subject to valid existing rights, the minerals in Federal lands which are part of the System and constitute the bank or bed are situated within one-quarter mile of the bank of any river designated as wild and withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws as of October 2, 1968, the date of the Wild and Scenic Rivers Act, or as of the date of inclusion of a river into the system.

The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated for study as a potential addition to the System is withdrawn from all forms of appropriation under the mining laws during the periods specified in 16 U.S.C. 1278(b). This does not preclude prospecting in such study area subject to such conditions as the Secretary of Agriculture finds appropriate to safeguard the area in the event it is subsequently included in the System.

APPENDIX 3

TITLE 2800 - MINERALS AND GEOLOGY

2816.4 - Power Site Withdrawals. Mining Claims Rights Restoration Act of August 11, 1955 (P.L. 84-359; 69 Stat. 682-683; 30 U.S.C. 621-625).

1. General Provisions of Act. The Mining Claims Rights Restoration Act of 1955 provides, with certain restrictions for mining, developing, and utilizing the mineral resources of all public lands withdrawn or reserved for power development. The Act:

a. Requires that a mining locator file a notice of location with the appropriate Bureau of Land Management office within 60 days after the location is made.

b. Suspends placer mining to allow the Secretary of the Interior to hold a public hearing and to consider whether to permit or prohibit placer mining.

c. Provides for public hearings to determine whether proposed placer mining operations will substantially interfere with other uses of the land. The Secretary's order is based upon the findings from the public hearings. The act also provides for rules and regulations to govern bonds and deposits to insure restoration of lands involved in permitted placer mining operations.

The Bureau of Land Management has 60 days from the filing of a notice of a placer location to notify the claimant of any intention to hold a public hearing and thereby further delay mining activities.

2. Cooperative Case Actions. For claims on National Forest lands, the Forest Service cooperates with the Bureau of Land Management in decisions about mining claims.

a. Action by State Director (BLM). Upon receipt of a notice of location of a placer or lode mining claim on National Forest System lands open for location under the Act of August 11, 1955, the State Director, will immediately notify the appropriate Regional Forester. The notification will include a copy of the notice of location, showing the date it was filed in the Bureau of Land Management office, and, if a placer claim, will request a report.

b. Action by Forest Service. Upon such notification of a placer claim, the Forest Supervisor will promptly prepare and submit a report including an environmental analysis and recommendations to the Regional Forester. The report will be based upon such field examination or other action as deemed necessary.

The Regional Forester will send a report to the State Director containing specific recommendations for or against a public hearing and for or against permitting the placer operations, setting forth clearly and concisely the reasons for the recommendation.

The Forest Service should be prepared to make a factual statement supporting its recommendation at any public hearing. Potential hazards of the proposed placer mining operations to other uses of the land, including damages from erosion and stream pollution, should be treated fully.

By the memorandum of understanding of April 1957 between the Bureau of Land Management and the Forest Service, the Forest Service has only 40 days, from the filing of a notice of a placer location in the BLM district office, to submit its report to the BLM district office manager through the State supervisor.

APPENDIX 4

The legal subdivision description for each proposed withdrawal is:

1. Milsap Bar Scenic Zone. As described in Federal Register.

2. English Bar Scenic Zone. As described in Federal Register.

3. Recreation Zone. As described in Federal Register.

4. Caribou

T.25N., R.7E.,

Section 4, NW¼, NW¼SW¼
Section 5, SE¼
Section 8, W½E½

T.26N., R.7E.,

Section 25, W½NW¼
Section 26, S½NE¼, W½SE¼, S½SW¼
Section 33, SE¼, SE¼SW¼
Section 34, NE¼, S½NW¼, N½SW¼
Section 35, N½NW¼

5. Gopher Hill

T.24N., R.8E.,

Section 12, SW¼
Section 13, N½N½
Section 18, N½NW¼

6. New Golden Trout Crossing

T.20N., R.7E.,

Section 1, E½SW¼
Section 12, NW¼NW¼

7. South Fork of the Feather River

T.22N., R.9E.,

Section 22, S½

8. Onion Valley Creek

T.23N., R.10E.,

Section 5, NW¼SE¼, SW¼

9. Slate Creek

T.21N., R.9E.,

Section 31, NW¼, NW¼, SW¼

10. Race Track Point

T.19N., R.8E.,

Section 9, S½

11. Upper Crossing

T.21N., R.9E.,

Section 11, E½

12. West Branch Nelson Creek

T.22N., R.11E.,

Section 30, W½W½
Section 31, W½

13. Lower Nelson Creek Crossing

T.23N., R.10E.,

Section 22, W½

APPENDIX 5

The wording of the proposed regulation would amend existing 36 CFR 261.75 to read:

261.75 Regulations applicable to Region 5, California Region, as defined in 200.2.

(a) Definitions. In this section: (1) "Middle Fork of the Feather River" means the river and land area in or adjacent to Plumas National Forest described as the "River Area" in the notice at 35 FR 4219 or any amendment to that notice.

(2) "Motorized equipment" means any equipment having or using an engine or motor, *including water powered equipment* except small battery powered handheld devices such as cameras, shavers, flashlights, and Geiger counters.

(3) "Wild river zone" means the area described as the Bald Rock Canyon Wild River Zone or as the Upper Canyon Wild River Zone in the notice at 35 FR 4219 or any amendment to that notice.

* (4) "Scenic river zone" means the area described as the Milsap Bar Scenic River Zone or as the English Bar Scenic River Zone in the notice at 35 FR 4219 or any amendment to that notice.

(5) "Recreation river zone" means the area described as the Recreational River Zone in the notice at 35 FR 4219 or any amendment to that notice. *

(b) Prohibitions. (1) Possessing or using motorized equipment in the wild river zone of the Middle Fork of the Feather River, except on the Stag Point Trail or the Cleghorn Bar Trail, is prohibited.

(2) Paragraph (b)(1) of this section does not apply to any equipment authorized by a permit from the Forest Supervisor, Plumas National Forest, containing such terms and conditions as he considers necessary for the protection or preservation of the wild river zone or the health, safety or welfare of its users. Violation of any term or condition of such a permit is prohibited. [42 FR 31789, June 23, 1977]

* (3) Whoever locates a mining claim within the Milsap Bar Scenic River Zone, English Bar Scenic River Zone, or the Recreational River Zone must insure that no use of the surface of a mining claim or the resources therefrom not reasonably required for carrying on mining and prospecting shall be allowed, except under the National Forest rules and regulations, nor shall the locator prevent or obstruct other occupancy of the surface (including the recreational activities of gold panning and dredging) or use of surface resources under authority of National Forest Regulations, or permits issued thereunder, if such occupancy or use is not in conflict with mineral developments. *